

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BYFORD “PETER” WHITTINGHAM,)

Plaintiff,)

vs.)

NEVADA ATTORNEY GENERAL’S)
OFFICE, *et al.*,)

Defendants.)

Case No.: 2:20-cv-00811-GMN-EJY

ORDER

Pending before the Court is the Order and Report and Recommendation (“R&R”) of United States Magistrate Judge Elayna Youchah, (ECF No. 31). The Order grants Plaintiff Byford “Peter” Whittingham’s (“Plaintiff’s”) Motion for Leave to Amend, (ECF No. 18), such that Plaintiff has the opportunity to replead his Title VII retaliation claim against the Nevada Attorney General’s Office. (Order and R&R 11:11–13, ECF No. 31). The R&R recommends that other proposed amendments in Plaintiff’s Motion to Amend be denied with or without prejudice. (*Id.* 11:17–12:13).

A party may file specific written objections to the findings and recommendations of a United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a de novo determination of those portions to which objections are made. *Id.* The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b). Where a party fails to object, however, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation

1 where no objections have been filed. *See, e.g., United States v. Reyna–Tapia*, 328 F.3d 1114,
2 1122 (9th Cir. 2003).

3 Here, no party filed an objection, and the deadline to do so, October 6, 2020, has now
4 passed. (*See* Min. Order, ECF No. 31).

5 Accordingly,

6 **IT IS HEREBY ORDERED** that the Report and Recommendation, (ECF No. 31), is
7 **ACCEPTED AND ADOPTED in full.**

8 **IT IS FURTHER ORDED** that the Motion for Leave to Amend Plaintiff’s Complaint,
9 (ECF No. 18), is **DENIED with prejudice** with respect to the following proposed
10 amendments:

- 11 • Plaintiff’s First and Fourth Causes of Action asserted against proposed defendant Aaron
12 Ford for alleged violations of Title VII of the 1964 Civil Rights Act and Nevada Revised
13 Statute Chapter 613 because there is no individual liability for violation of the statutory
14 prohibitions found therein.
- 15 • Plaintiff’s First and Fourth Causes of Action to the extent he seeks to allege race
16 discrimination against the State of Nevada because Plaintiff did not administratively
17 exhaust this claim.
- 18 • Plaintiff’s Fourth Cause of Action alleging any state law claims against the State of
19 Nevada because the State is immune from such suit.

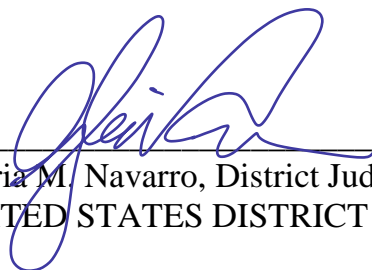
20 **IT IS FURTHER ORDERED** that the following proposed claims be dismissed without
21 prejudice with **one additional opportunity to amend.**

- 22 • Plaintiff’s First Cause of Action alleging retaliation against the State of Nevada under
23 Title VII of the 1964 Civil Rights Act. The State does not enjoy immunity from Title
24 VII claims, Plaintiff did exhaust this claim, but Plaintiff’s Proposed FAC fails to allege
25 sufficient facts to state this claim.

- Plaintiff's Second and Third Causes of Action alleging 1983 and 1981 liability, respectively, against proposed individual defendants David O'Hara and Jane Doe based on their individual capacities. These individual defendants are not immune from suit if sued in their individual capacities, but Plaintiff's Proposed FAC fails to allege sufficient facts to state these claims.

IT IS FURTHER ORDERED that in light of Plaintiff filing his First Amended Complaint, (ECF No. 35), with leave of Court, Defendants' Motion to Dismiss the original Complaint, (ECF No. 12), is **DENIED as moot**.

Dated this 7 day of December, 2020.



Gloria M. Navarro, District Judge
UNITED STATES DISTRICT COURT